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GORDON METAL CO. *v.* KINGAN & CO., Limited, et al.

March 16, 1922.

[111 S. E. 99.]

Railroads (§ 81*)—"Reserve" from Operation of Deed Held Equivalent to Exception.—A railway company's deed was made subject to reservation of rights belonging to a railway company for maintenance of its tracks upon the land and the rights growing out of an agreement with a manufacturer for use of the side track passing through the land conveyed. Held, under Code 1919, §§ 5149, 5512, that by use of "reserve" the grantor intended to withhold something from the grantee, and by reserving from the operation of the deed the rights of the railway and lessee the grantor intended to except from the deed and retain to itself the rights in relation to the contracts.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Reserve—Reserved. For other cases, see 4 Va.-W. Va. Enc. Dig. 437.]

Error to Law and Equity Court of City of Richmond.

Action by the Gordon Metal Company against Kingan & Co., Limited, and another. From judgment for defendants, plaintiff brings error. Affirmed.

S. A. Anderson and *Smith & Gordon*, all of Richmond, for plaintiff in error.

Geo. Bryan, *A. W. Patterson*, and *Thos. B. Gay*, all of Richmond, for defendants in error.

JENKINS *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 101.]

1. Criminal Law (§§ 308, 351 (3), 552 (1)*)—Flight Raises No Presumption of Guilt, but May Be Considered by Jury and Given Such Weight as They Deem Proper.—In a prosecution for maiming, where the evidence showed that immediately after the shooting accused ran away to another county, an instruction that the flight of a person after the commission of a crime raised a presumption of guilt was incorrect, as such flight is merely evidence, tending to show guilt, to be considered by the jury, and given such weight as they deem proper in connection with other facts and circumstances.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 86.]

2. Criminal Law (§§ 741 (6), 782 (4)*)—Defendant's Explanation of Flight a Jury Question; and Court Should Instruct on Manner of

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Weighing Evidence of Flight.—In a prosecution for maiming, defendant was entitled to have the jury pass on his explanation as to why he fled to another county, and it was important that the jury be properly instructed as to the manner in which they should consider and weigh evidence of flight.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 86.]

3. Criminal Law (§ 823 (9)*)—Error in Instruction on Flight as Presumption of Guilt Not Cured by Instruction on Presumption of Innocence.—Error in an instruction that flight raised a presumption of guilt was not cured by an instruction that accused is presumed innocent till proven guilty.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 744.]

Error to Circuit Court, Rappahannock County.

Ray Jenkins was convicted under the maiming statute (Code 1919, § 4402), and he brings error. Reversed.

Grimsley & Miller, of Culpeper, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen., for the Commonwealth.

LEHIGH PORTLAND CEMENT CO. *v.* VIRGINIA S. S. CO.

March 16, 1922.

[111 S. E. 104.]

1. Judgment (§ 183*)—Bill of Particulars and Notice of Motion for Judgment on Claim for Breach of Shipping Contract Held Sufficient.

—In a steamship company's action for breach of a contract for the shipment of 40,000 barrels of cement, a bill of particulars claiming the balance due for transporting the whole 40,000 barrels, and, without waiving plaintiff's right to rely thereon, giving, in additional items, the loss suffered while the steamship was lying idle waiting for shipments, the salaries paid during such time, the reasonable return on the investment, the approximate loss by diverting the steamship from a different route, the reasonable amount of profits on earnings on the contract, and the pecuniary value of the portion of the contract not performed, held sufficiently full, especially where the notice of motion for judgment contained a detailed statement of the claim.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 380.]

2. Judgment (§ 183*)—Remedy for Insufficient Bill of Particulars Is to Move to Reject Evidence of Matters Not Sufficiently Described.—If a bill of particulars was insufficient, defendant might have moved to reject any evidence offered by plaintiff touching any matter not

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.